

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE	)	
	)	
v.	)	ID No. 0107017049
	)	
AKBAR HASSAN-EL,	)	
	)	
Defendant.	)	

Submitted: October 12, 2010  
Decided: January 27, 2010

**On Defendant's Second Motion for Postconviction Relief. DENIED.**

**ORDER**

R. David Favata Esquire, Department of Justice, 102 W. Water Street, Dover, Delaware 19904. Attorney for State of Delaware.

Akbar Hassan-El, James T. Vaughn Correctional Center, Smyrna, Delaware. *Pro Se* Defendant.

**CARPENTER, J.**

On this 27<sup>th</sup> day of January, 2010, upon consideration of Defendant's Second Motion for Postconviction Relief, it appears to the Court that:

1. Akbar Hassan-El ("Defendant") has filed a Second Motion for Postconviction Relief on August 31, 2009 pursuant to Superior Court Criminal Rule 61 ("Rule 61"). For the reasons set forth below, Defendant's Second Motion for Postconviction Relief is **DENIED**. A recitation of the facts will not be repeated here as they are set forth in this Court's July 31, 2008 Order and the Supreme Court's February 2, 2009 Order.

2. Before this Court reviews the merits of the motion, it must first determine whether the Motion meets the procedural requirements set forth in Rule 61(i).<sup>1</sup> Under this section of Rule 61 certain parameters are given governing the proper filing of a motion for postconviction relief: (1) the motion must be filed within one year of the final judgment of conviction; (2) any ground for relief not raised in a prior postconviction motion will be barred if raised in the instant Motion; (3) any claims which the Defendant failed to assert in the proceedings leading to his conviction are barred, unless he is able to show cause and prejudice; and (4) any ground for relief raised in this Motion must not have been formerly adjudicated in any

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<sup>1</sup> See *Torres v. State*, 2009 WL 1175048, at \*2 (Del. May 1, 2009).

proceeding leading to the conviction, unless the interest of justice requires reconsideration.<sup>2</sup>

3. First, Defendant's Second Motion for Postconviction Relief is time barred. Rule 61(i)(1) requires motions for postconviction relief to be filed no later than one year from the date a defendant's conviction is final. On July 18, 2006, the Supreme Court affirmed the judgment against the Defendant. This motion was subsequently filed on August 31, 2009, well after the one year limit. As such, Defendant's motion must be denied unless he can establish that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceeding that led to his conviction. After reviewing the Defendant's lengthy petition, the Court finds that no such showing has been established by the Defendant that warrants an exception to this procedural bar.

4. Even if the Defendant could overcome the untimeliness of his motion, the motion is also procedurally barred pursuant to Rule 61(i)(4). This section of Rule 61 bars any claims formerly adjudicated in any proceeding leading to the conviction, unless the interest of justice requires reconsideration.<sup>3</sup> It has been well established

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<sup>2</sup> See Super. Ct. Crim. R. 61(i)(1)-(5).

<sup>3</sup> Super. Ct. Crim. R. 61(i)(4) *Former Adjudication*. Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of

that “a defendant is not entitled to have a court re-examine an issue that has been previously resolved ‘simply because the claim is refined or restated.’”<sup>4</sup> As such, the following twenty-three of the thirty-six claims are barred under this section of Rule 61 because they were previously addressed in Defendant’s first postconviction motion, and the Court does not believe the issues merit a review in the “interest of justice.”

- a. Ground One: Insufficient Evidence to Support the Conviction
- b. Ground Two: Prosecutorial Misconduct
- c. Ground Three: Prosecutorial Misconduct
- d. Ground Four: Prosecutorial Misconduct
- e. Ground Five: Prosecutorial Misconduct
- f. Ground Six: Ineffective Assistance of Counsel
- g. Ground Seven: Ineffective Assistance of Counsel
- h. Ground Eight: Ineffective Assistance of Counsel
- i. Ground Nine: Ineffective Assistance of Counsel
- j. Ground Twelve: Ineffective Assistance of Counsel
- k. Ground Thirteen: Ineffective Assistance of Counsel
- l. Ground Fourteen: Ineffective Assistance of Counsel
- m. Ground Fifteen: Ineffective Assistance of Counsel
- n. Ground Sixteen: Ineffective Assistance of Counsel
- o. Ground Seventeen: Ineffective Assistance of Counsel
- p. Ground Eighteen: Ineffective Assistance of Counsel
- q. Ground Nineteen: Ineffective Assistance of Counsel
- r. Ground Twenty: Ineffective Assistance of Counsel
- s. Ground Twenty-One: Ineffective Assistance of Counsel
- t. Ground Twenty-Four: Plain Error
- u. Ground Twenty-Six: Insufficient Evidence to Support Conviction of Attempted Robbery

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justice.

<sup>4</sup> Super. Ct. Crim. R. 61(i)(4).

- v. Ground Thirty-One: Ineffective Assistance of Counsel
- w. Ground Thirty-Six: Ineffective Assistance of Counsel

5. The remaining thirteen claims are barred under Rule 61(i)(3). Under this section of the Rule, any claims which the Defendant failed to assert in the proceedings leading to his conviction are barred unless the Defendant establishes that there is a justifiable cause to be relieved from the procedural bar and he has been prejudiced by the alleged violation of his rights. Because these claims were not raised on appeal to the Supreme Court or in his first postconviction motion, and the Court finds he has not made the required showing for relief, the Court denies the following thirteen claims:

- a. Ground Ten: Ineffective Assistance of Counsel
- b. Ground Eleven: Ineffective Assistance of Counsel
- c. Ground Twenty-Two: Abuse of Discretion
- d. Ground Twenty-Three: Plain Error
- e. Ground Twenty-Five: Ineffective Assistance of Counsel
- f. Ground Twenty-Seven: Prosecutorial Misconduct
- g. Ground Twenty-Eight: Prosecutorial Misconduct
- h. Ground Twenty-Nine: Prosecutorial Misconduct
- I. Ground Thirty: Plain Error
- j. Ground Thirty-Two: Ineffective Assistance of Counsel
- k. Ground Thirty-Three: Plain Error
- l. Ground Thirty-Four: The Defendant Was Denied His Constitutional Right To Have a Jury Of His Peers
- m. Ground Thirty-Five: Ineffective Assistance of Counsel

6. For the reasons set forth above, the Defendant's Second Motion for Postconviction Relief and Motion for an Evidentiary Hearing are hereby **DENIED**.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.

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Judge William C. Carpenter, Jr.